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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,305	10/24/2003	William F. Crismore	7404-572/BMID-9738RE-DIV3	1452

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EXAMINER

ALEXANDER, LYLE

ART UNIT

PAPER NUMBER

1773

NOTIFICATION DATE

DELIVERY MODE

01/18/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Karla.Dirks@Roche.com  
DocketDept@uspatent.com

### Office Action Summary

**Application No.**

10/693,305

**Applicant(s)**

CRISMORE ET AL.

**Examiner**

LYLE A. ALEXANDER

**Art Unit**

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 104, 107, 109-113, 115-117 and 127-134 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 104, 107, 109-113, 115-117, 127-134 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No.(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Reissue Applications***

1. The reissue oath/declaration filed with this application is defective because it fails to contain the statement required under 37 CFR 1.175(a)(1) as to applicant's belief that the original patent is wholly or partly inoperative or invalid. See 37 CFR 1.175(a)(1) and see MPEP § 1414. The reissue declaration filed on 12/21/07 is not signed by all of the inventors.
2. Claims 104,107,109-113,115-117, 127-134 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the oath is set forth in the discussion above in this Office action.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 131 and 134 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Applicants' disclosure of "Glucose Elite" as characterized in the 12/12/06 remarks.
5. See the appropriate paragraph of the 6/25/07 Office action.
6. These claims are not directed to an opaque portion, but rather to a colored portion. The depiction of the "Glucose Elite" provided on page 14 of the 4/13/09 remarks illustrates areas of different color and is properly read on claims 131 and 134 above.

***Allowable Subject Matter***

The following is a statement of reasons for the indication of allowable subject matter: If a proper reissue oath is filed, then claims 104,107,109-113,115-117, 127-130 and 132-133 would be free of the art of record and 35 USC 112 issues. In addition to the remarks of record, the Office agrees with Applicant's remarks the original specification provides support for the instant claim language "opaque portion". Specifically, the 5,997,817 patent, which is the original disclosure, teaches in column 8 lines 26-51 the roof(13) has an opaque ink(16) patterned on the surface to create window(18) which fully supports the instant claim language of an opaque portion.

***Response to Arguments***

7. Applicant's arguments filed 4/13/09 have been fully considered but they are not persuasive.
8. The arguments of record are convincing with respect to the 35 USC 112 issues of claims 104,107,109-113,115-117, 127-134. However, claims 131 and 134 are rejected under 35 USC 102(b) as being clearly anticipated by "Glucose Elite". Applicant argues "Glucose Elite" does not teach the claimed "colored portions". Based upon Applicant's depiction of "Glucose Elite" on page 14 in the 4/13/09 remarks, there are areas of different shading which are properly read on the claimed "colored portions". The Office maintains the 35 USC 102(b) rejections of claims 131 and 134 over "Glucose Elite" are proper.

This application is a divisional of 10/008,788, which is a reissue application. The parent application 10/008,788 reissue was suspended because there were only original patent claims (no error was being corrected). If one of the divisional reissue applications is ready to be allowed, the claims from the first reissue application will need to be combined with the claims from the divisional reissue in a single application.

MPEP 1450 states:

If the reissue application containing only original unamended claims becomes allowable first (and no "error" under 35 U.S.C. 251 exists), further action in that reissue application will be suspended to await examination in the divisional reissue application(s) containing the added claims. Multiple suspensions (usually six-month periods) may be necessary. The Office will not permit claims to issue in a reissue application which application does not correct any error in the original patent. Once a divisional reissue application containing the added claims is examined and becomes allowable, the examiner will issue a requirement under 37 CFR 1.177(c) for applicant to merge the claims of the suspended first reissue application with the allowable claims of the divisional reissue application into a single application, by placing all of the claims in one of the applications and expressly abandoning the other. The Office action making this requirement will set a two-month period for compliance with the requirement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYLE A. ALEXANDER whose telephone number is (571)272-1254. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LYLE A ALEXANDER/  
Primary Examiner, Art Unit 1773